

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

WI-LAN, INC.,

Plaintiff,

v.

ACER, INC., et al.,

Defendants.

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C.A. No. 2:10-cv-124-TJW

JURY TRIAL DEMANDED

**DEFENDANT CSR PLC'S RULE 12(b)(5) MOTION
TO DISMISS FOR IMPROPER SERVICE OF PROCESS**

Defendant CSR plc (“CSR”) moves to dismiss all of Plaintiff Wi-LAN, Inc.’s (“Wi-LAN”) claims and causes of action because CSR was not properly served.¹ Although Wi-LAN attempted to effect service under the Hague Convention, the British Central Authority requires that requests for service be made and signed by a consular or judicial officer. CSR’s request for service was improper because it was made and signed by an employee of a domestic litigation-support company.

FACTUAL AND PROCEDURAL BACKGROUND

CSR is a United Kingdom holding company headquartered in Cambridge, England. *See* Pl.’s 1st Am. Complaint ¶ 8 (Dkt. #16). A certified copy of Wi-LAN’s First Amended Complaint (the “Complaint”) was hand delivered to CSR’s Cambridge headquarters on January 7, 2011. The Complaint was accompanied by a Hague Convention service form. *See* Ex. A. The Hague form was signed by Josh R. Cobb of APS International, Ltd., a domestic litigation-support company. *See id.*; *see also* www.civilactiongroup.com.

¹ CSR reserves the right to file additional 12(b) motions in the future, if necessary.

STANDARD OF REVIEW

“An individual or entity named as a defendant is not obliged to engage in litigation unless notified of the action, and brought under a court’s authority, by formal process.” *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347 (1999). “[O]nce the validity of service of process has been contested, the plaintiff bears the burden of establishing its validity.” *Carimi v. Royal Caribbean Cruise Line, Inc.*, 959 F.2d 1344, 1346 (5th Cir. 1992). In addition, “delivery is not synonymous with service.” *Id.* at 1348.

ARGUMENT

To effect service in England under the Hague Convention, “[t]he British Central Authorities require that the court in the United States be the applicant for service under the Convention. Therefore, the court must be shown as the applicant and the requesting authority on the USM 94 and the clerk of court must sign the form.” U.S. Dep’t of State, *Judicial Assistance United Kingdom*, http://travel.state.gov/law/judicial/judicial_671.html; *see also* CPR 6.50, *available at* http://www.justice.gov.uk/civil/procrules_fin/contents/parts/part06.htm (“The Senior Master will serve a document to which this section applies upon receipt of—(a) a written request for service—(i) where the foreign court or tribunal is in a convention country, from a consular or other authority of that country.”).

The applicant on the Hague service form served on CSR is Josh R. Cobb of APS International, Ltd., a domestic litigation-support company, not a judicial or consular official. *See* Ex. A. Because the Hague service form with which CSR was served is defective, service on CSR was ineffective and must be quashed.

CONCLUSION

Service on CSR was defective under the United Kingdom laws. Accordingly, Defendant CSR respectfully requests that the Court dismiss Plaintiff Wi-LAN, Inc.'s claims and causes of action against CSR.

Dated: January 28, 2011

Respectfully submitted,

By: /s/ Claudia Wilson Frost
Claudia Wilson Frost
State Bar No. 21671300
909 Fannin, Suite 2000
Houston, Texas 77010
(713) 276-7600
(713) 276-7673 (Facsimile)
claudia.frost@pillsburylaw.com

**ATTORNEY-IN-CHARGE FOR DEFENDANT
CSR plc**

OF COUNSEL:

Jeffrey Johnson
State Bar No. 24029638
PILLSBURY WINTHROP SHAW PITTMAN LLP
909 Fannin, Suite 2000
Houston, Texas 77010
(713) 276-7600
(713) 276-7673 (facsimile)
jeffrey.johnson@pillsburylaw.com

**ATTORNEYS FOR DEFENDANT
CSR plc**

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on this 28th day of January, 2011. Any other counsel of record will be served by first class U.S. mail on this same day.

/s/ Claudia Wilson Frost

Claudia Wilson Frost